

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN SENATE MAY 27, 2011

## SENATE BILL

**No. 163**

---

### Introduced by Senator Evans

February 2, 2011

---

An act to amend Sections 6005, 6006, 6007, 6008.1, 6008.4, 6010, 6011, 6013.6, 6015, 6016, 6018, 6019, 6020, 6021, 6024, 6033, 6036, 6037, 6040, 6042, 6046.7, 6069, 6070, 6076, 6076.5, 6079.5, 6086, 6086.5, 6086.14, 6140, 6140.01, 6140.05, 6140.5, 6141, 6161, 6168, 6169, 6170, 6190.1, 6200, 6201, 6203, 6204, 6206, 6222, 6225, 6226, 6231, and 6238 of, to amend, repeal, and add Section 6001.2 of, to add Sections 6001.1, 6009.7, 6012, 6013.2, 6013.3, 6013.5.5, 6026.7, and 6140.12 to, to add and repeal Section 6140.02 of, to repeal Sections 6012.5, 6013.4, 6014, and 6017 of, and to repeal and add ~~Section~~ *Sections 6001.2 and 6013.1* of, the Business and Professions Code, relating to attorneys.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Evans. Attorneys: board of trustees: annual membership fee.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation.

(1) Under existing law, the State Bar is governed by a board known as the Board of Governors of the State Bar. The board of governors consists of 23 members, including 15 attorney members, one attorney

member elected by the board of directors of the California Young Lawyers Association, 6 public members, and the President of the State Bar. Existing law provides for the election of attorney members to the board from specified counties included in State Bar Districts. Under existing law, the public members of the board are appointed by the Governor and the Legislature. Existing law requires a public member to have never been a member of the State Bar or admitted to practice before any court in the United States. Public members are subject to specified conflict-of-interest provisions.

This bill would revise and recast these provisions by renaming the board of governors as the board of trustees and would also revise the composition of the board to include no more than 23 members and no less than 19 members, as specified and determined by the State Bar, to include the existing 6 public members appointed by the Governor and the Legislature and 13 attorney members. Under the bill, the 13 attorney members would consist of 6 attorney members elected from State Bar Districts based on the 6 court of appeal districts, 5 attorney members appointed by the Supreme Court, and 2 attorney members appointed by the Speaker of the Assembly and the Senate Committee on Rules. The bill would require these attorney members to serve for a term of 3 years and would limit the elected and Supreme Court appointed members to being reappointed or reelected for one additional term. With respect to the Supreme Court appointments, the bill would specify criteria that the Supreme Court should consider in making these appointments and would require the State Bar to carry out the administrative responsibilities related to the Supreme Court's appointments.

The bill would require the State Bar to reduce the board of trustees from 23 members to 19 members by October 31, 2014. The bill would require the State Bar to develop a plan for implementing the transition to a 19-member board by January 31, 2012, and to submit a written report detailing that plan to the Committees on Judiciary by January 31, 2012. The bill would also require the State Bar to report annually to the Committees on Judiciary on its progress toward implementing this transition. The bill would prohibit the State Bar from changing or abolishing a board member's term that commenced prior to December 31, 2011, or forcing any board member to resign whose term commenced prior to that date in order to accomplish the transition. The bill would also declare the intent of the Legislature in this regard.

The bill would make public members subject to additional conflict-of-interest provisions, such as the provision that prohibits a

public member from being a close family member of a member of the State Bar.

The bill would make other conforming changes related to the renaming of the board and the establishment of both an election and appointment process for attorney members of the board.

(2) Under existing law, the officers of the State Bar are a president, 4 vice presidents, a secretary, and a treasurer, and one of the vice presidents may also be elected to the office of treasurer. Existing law requires the board, within 270 days before the annual meeting, to elect the officers for the ensuing year. Existing law requires the president and other officers to be elected from among members with specified terms. Under existing law, the president may vote only in the case of a specified tie vote.

This bill would instead provide that the officers shall include a president, a vice president, a secretary, and a treasurer. The bill would require the board to elect the officers within 90 days before the annual meeting. The bill would also authorize the president and the other officers to be elected from among all members of the board. The bill would also delete the limitation on the president's voting authority.

(3) The bill would require the board to complete and implement a 5-year strategic plan and would require the president to report to the Supreme Court, the Governor, and the Committees on Judiciary on certain aspects of the strategic plan.

(4) Existing law establishes a Governance in the Public Interest Task Force within the State Bar. The task force is made up of 11 specified board members, including the President of the State Bar, and these board members are appointed by the president. Existing law requires the task force to prepare a report that includes its recommendations for, among other things, enhancing and ensuring the protection of the public.

This bill would ~~instead, until January 1, 2013, reconstitute the task force to be comprised of 7 members, including 3 attorney members and 3 public members appointed by the president, and the president would continue to serve as a member of the~~ *repeal that provision establishing that* task force. The bill would, on and after January 1, 2013, ~~reconstitute the~~ *establish a* task force to be comprised of a total of 7 members, including 2 elected attorney members, 2 appointed members, and 2 public members, who would be selected as specified, and the president. The bill would require the task force to make suggestions to the board of trustees regarding the strategic plan described above and other issues as requested by the Legislature.

(5) Existing law requires the board of governors to charge an annual membership fee for active members of up to \$315 for 2011. Existing law also requires the board to charge an annual membership fee for inactive members of up to \$75. Existing law authorizes, until January 1, 2014, \$10 of those membership fees to be allocated to support nonprofit organizations that provide free legal service to persons of limited means, and authorizes a member to deduct that amount from his or her annual fee if the member elects not to make this allocation.

This bill would require the board to charge that annual membership fee for active members for 2012 minus a \$10 rebate to be described in a specified manner on the annual dues statement. The bill would require the board to charge that annual membership fee for inactive members minus a \$10 rebate to be described in a specified manner on the annual dues statement. The bill would increase the amount of those membership fees that may be allocated to support nonprofit organizations that provide free legal services to \$20 and the bill would specify that this \$20 shall be retained in the general fund of the State Bar if a member does not elect to make such an allocation.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6001.1 is added to the Business and  
2 Professions Code, to read:  
3 6001.1. Protection of the public shall be the highest priority  
4 for the State Bar of California and the board of trustees in  
5 exercising their licensing, regulatory, and disciplinary functions.  
6 Whenever the protection of the public is inconsistent with other  
7 interests sought to be promoted, the protection of the public shall  
8 be paramount.  
9 ~~SEC. 2. Section 6001.2 of the Business and Professions Code~~  
10 ~~is amended to read:~~  
11 ~~6001.2. (a) On or before February 1, 2011, there shall be~~  
12 ~~created within the State Bar a Governance in the Public Interest~~  
13 ~~Task Force comprised of 7 members, including 6 members~~  
14 ~~appointed by the President of the State Bar, three of whom shall~~  
15 ~~be attorney members of the board and three of whom shall be~~  
16 ~~public members of the board. The president shall also be a member~~

1 of the task force and shall preside over its meetings, all of which  
2 shall be held consistent with Section 6026.5.

3 (b) On or before May 15, 2011, and every three years thereafter,  
4 the task force shall prepare and submit a report to the Supreme  
5 Court, the Governor, and the Assembly and Senate Committees  
6 on Judiciary that includes its recommendations for enhancing the  
7 protection of the public and ensuring that protection of the public  
8 is the highest priority in the licensing, regulation, and discipline  
9 of attorneys, to be reviewed by the Assembly and Senate  
10 Committees on Judiciary in their regular consideration of the  
11 annual State Bar dues measure. If the task force does not reach a  
12 consensus on all of the recommendations in its report, the  
13 dissenting members of the task force may prepare and submit a  
14 dissenting report to the same entities described in this subdivision,  
15 to be reviewed by the committees in the same manner.

16 (c) This section shall remain in effect only until January 1, 2013,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2013, deletes or extends that date.

19 *SEC. 2. Section 6001.2 of the Business and Professions Code*  
20 *is repealed.*

21 6001.2. (a) On or before February 1, 2011, there shall be  
22 created within the State Bar a Governance in the Public Interest  
23 Task Force comprised of 11 members appointed by the President  
24 of the State Bar, seven of whom shall be attorney members of the  
25 board and three of whom shall be public members of the board.  
26 The president shall also be a member of the task force and shall  
27 preside over its meetings, all of which shall be held consistent with  
28 Section 6026.5.

29 (b) On or before May 15, 2011, and every three years thereafter,  
30 the task force shall prepare and submit a report to the Supreme  
31 Court, the Governor, and the Assembly and Senate Committees  
32 on Judiciary that includes its recommendations for enhancing the  
33 protection of the public and ensuring that protection of the public  
34 is the highest priority in the licensing, regulation, and discipline  
35 of attorneys, to be reviewed by the Assembly and Senate  
36 Committees on Judiciary in their regular consideration of the  
37 annual State Bar dues measure. If the task force does not reach a  
38 consensus on all of the recommendations in its report, the  
39 dissenting members of the task force may prepare and submit a

1 ~~dissenting report to the same entities described in this subdivision,~~  
2 ~~to be reviewed by the committees in the same manner.~~

3 SEC. 2.5. Section 6001.2 is added to the Business and  
4 Professions Code, to read:

5 6001.2. (a) On or before February 1, 2013, there shall be  
6 created within the State Bar a Governance in the Public Interest  
7 Task Force comprised of 7 members, including, 6 members  
8 appointed as provided herein and the President of the State Bar.  
9 Two members shall be elected attorney members of the board of  
10 trustees who are selected by the elected attorney members, two  
11 members shall be attorney members of the board of trustees  
12 appointed by the Supreme Court who are selected by the Supreme  
13 Court appointees, and two members shall be public members of  
14 the board of trustees selected by the public members. The president  
15 shall preside over its meetings, all of which shall be held consistent  
16 with Section 6026.5.

17 (b) On or before May 15, 2014, and every three years thereafter,  
18 the task force shall prepare and submit a report to the Supreme  
19 Court, the Governor, and the Assembly and Senate Committees  
20 on Judiciary that includes its recommendations for enhancing the  
21 protection of the public and ensuring that protection of the public  
22 is the highest priority in the licensing, regulation, and discipline  
23 of attorneys, to be reviewed by the Assembly and Senate  
24 Committees on Judiciary in their regular consideration of the  
25 annual State Bar dues measure. If the task force does not reach a  
26 consensus on all of the recommendations in its report, the  
27 dissenting members of the task force may prepare and submit a  
28 dissenting report to the same entities described in this subdivision,  
29 to be reviewed by the committees in the same manner.

30 (c) The task force shall make suggestions to the board of trustees  
31 regarding possible additions to, or revisions of, the strategic plan  
32 required by Section 6140.12. In addition, the task force shall also  
33 make suggestions to the board of trustees regarding other issues  
34 requested from time to time by the Legislature.

35 (d) This section shall become operative on January 1, 2013.

36 SEC. 3. Section 6005 of the Business and Professions Code is  
37 amended to read:

38 6005. Inactive members are those members who have requested  
39 that they be enrolled as inactive members or who have been

1 enrolled as inactive members by action of the board of trustees as  
2 set forth in Section 6007.

3 SEC. 4. Section 6006 of the Business and Professions Code is  
4 amended to read:

5 6006. Active members who retire from practice shall be  
6 enrolled as inactive members at their request.

7 Inactive members are not entitled to hold office or vote or  
8 practice law. Those who are enrolled as inactive members at their  
9 request may, on application and payment of all fees required,  
10 become active members. Those who are or have been enrolled as  
11 inactive members at their request are members of the State Bar for  
12 purposes of Section 15 of Article VI of the California Constitution.  
13 Those who are enrolled as inactive members pursuant to Section  
14 6007 may become active members as provided in that section.

15 Inactive members have such other privileges, not inconsistent  
16 with this chapter, as the board of trustees provides.

17 SEC. 5. Section 6007 of the Business and Professions Code is  
18 amended to read:

19 6007. (a) When a member requires involuntary treatment  
20 pursuant to Article 6 (commencing with Section 5300) of Chapter  
21 2 of Division 5 of, or Part 2 (commencing with Section 6250) of  
22 Division 6 of the Welfare and Institutions Code, or when under  
23 an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare  
24 and Institutions Code he or she has been placed in or returned to  
25 inpatient status at the California Rehabilitation Center or its  
26 branches, or when he or she has been determined insane or mentally  
27 incompetent and is confined for treatment or placed on outpatient  
28 status pursuant to the Penal Code, or on account of his or her  
29 mental condition a guardian or conservator, for his or her estate  
30 or person or both, has been appointed, the Board of Trustees or an  
31 officer of the State Bar shall enroll the member as an inactive  
32 member.

33 The clerk of any court making an order containing any of the  
34 determinations or adjudications referred to in the immediately  
35 preceding paragraph shall send a certified copy of that order to the  
36 State Bar at the same time that the order is entered.

37 The clerk of any court with which is filed a notice of certification  
38 for intensive treatment pursuant to Article 4 (commencing with  
39 Section 5250) of Chapter 2 of Division 5 of the Welfare and

1 Institutions Code, upon receipt of the notice, shall transmit a  
2 certified copy of it to the State Bar.

3 The State Bar may procure a certified copy of any determination,  
4 order, adjudication, appointment, or notice when the clerk  
5 concerned has failed to transmit one or when the proceeding was  
6 had in a court other than a court of this state.

7 In the case of an enrollment pursuant to this subdivision, the  
8 State Bar shall terminate the enrollment when the member has had  
9 the fact of his or her restoration to capacity judicially determined,  
10 upon the member's release from inpatient status at the California  
11 Rehabilitation Center or its branches pursuant to Section 3053,  
12 3109, or 3151 of the Welfare and Institutions Code, or upon the  
13 member's unconditional release from the medical facility pursuant  
14 to Section 5304 or 5305 of the Welfare and Institutions Code; and  
15 on payment of all fees required.

16 When a member is placed in, returned to, or released from  
17 inpatient status at the California Rehabilitation Center or its  
18 branches, or discharged from the narcotics treatment program, the  
19 Director of Corrections or his or her designee shall transmit to the  
20 State Bar a certified notice attesting to that fact.

21 (b) The board shall also enroll a member of the State Bar as an  
22 inactive member in each of the following cases:

23 (1) A member asserts a claim of insanity or mental incompetence  
24 in any pending action or proceeding, alleging his or her inability  
25 to understand the nature of the action or proceeding or inability to  
26 assist counsel in representation of the member.

27 (2) The court makes an order assuming jurisdiction over the  
28 member's law practice, pursuant to Section 6180.5 or 6190.3.

29 (3) After notice and opportunity to be heard before the board  
30 or a committee, the board finds that the member, because of mental  
31 infirmity or illness, or because of the habitual use of intoxicants  
32 or drugs, is (i) unable or habitually fails to perform his or her duties  
33 or undertakings competently, or (ii) unable to practice law without  
34 substantial threat of harm to the interests of his or her clients or  
35 the public. No proceeding pursuant to this paragraph shall be  
36 instituted unless the board or a committee finds, after preliminary  
37 investigation, or during the course of a disciplinary proceeding,  
38 that probable cause exists therefor. The determination of probable  
39 cause is administrative in character and no notice or hearing is  
40 required.



1 In the case of an enrollment pursuant to this subdivision, the  
2 board shall terminate the enrollment upon proof that the facts found  
3 as to the member's disability no longer exist and on payment of  
4 all fees required.

5 (c) (1) The board may order the involuntary inactive enrollment  
6 of an attorney upon a finding that the attorney's conduct poses a  
7 substantial threat of harm to the interests of the attorney's clients  
8 or to the public or upon a finding based on all the available  
9 evidence, including affidavits, that the attorney has not complied  
10 with Section 6002.1 and cannot be located after reasonable  
11 investigation.

12 (2) In order to find that the attorney's conduct poses a substantial  
13 threat of harm to the interests of the attorney's clients or the public  
14 pursuant to this subdivision, each of the following factors shall be  
15 found, based on all the available evidence, including affidavits:

16 (A) The attorney has caused or is causing substantial harm to  
17 the attorney's clients or the public.

18 (B) The attorney's clients or the public are likely to suffer  
19 greater injury from the denial of the involuntary inactive enrollment  
20 than the attorney is likely to suffer if it is granted, or there is a  
21 reasonable likelihood that the harm will reoccur or continue. Where  
22 the evidence establishes a pattern of behavior, including acts likely  
23 to cause substantial harm, the burden of proof shall shift to the  
24 attorney to show that there is no reasonable likelihood that the  
25 harm will reoccur or continue.

26 (C) There is a reasonable probability that the State Bar will  
27 prevail on the merits of the underlying disciplinary matter.

28 (3) In the case of an enrollment under this subdivision, the  
29 underlying matter shall proceed on an expedited basis.

30 (4) The board shall order the involuntary inactive enrollment  
31 of an attorney upon the filing of a recommendation of disbarment  
32 after hearing or default. For purposes of this section, that attorney  
33 shall be placed on involuntary inactive enrollment regardless of  
34 the membership status of the attorney at the time.

35 (5) The board shall formulate and adopt rules of procedure to  
36 implement this subdivision.

37 In the case of an enrollment pursuant to this subdivision, the  
38 board shall terminate the involuntary inactive enrollment upon  
39 proof that the attorney's conduct no longer poses a substantial  
40 threat of harm to the interests of the attorney's clients or the public

1 or where an attorney who could not be located proves compliance  
2 with Section 6002.1.

3 (d) (1) The board may order the involuntary inactive enrollment  
4 of an attorney for violation of probation upon the occurrence of  
5 all of the following:

6 (A) The attorney is under a suspension order any portion of  
7 which has been stayed during a period of probation.

8 (B) The board finds that probation has been violated.

9 (C) The board recommends to the court that the attorney receive  
10 an actual suspension on account of the probation violation or other  
11 disciplinary matter.

12 (2) The board shall terminate an enrollment under this  
13 subdivision upon expiration of a period equal to the period of  
14 stayed suspension in the probation matter, or until the court makes  
15 an order regarding the recommended actual suspension in the  
16 probation matter, whichever occurs first.

17 (3) If the court orders a period of actual suspension in the  
18 probation matter, any period of involuntary inactive enrollment  
19 pursuant to this subdivision shall be credited against the period of  
20 actual suspension ordered.

21 (e) (1) The board shall order the involuntary, inactive  
22 enrollment of a member whose default has been entered pursuant  
23 to the State Bar Rules of Procedure if both of the following  
24 conditions are met:

25 (A) The notice was duly served pursuant to subdivision (c) of  
26 Section 6002.1.

27 (B) The notice contained the following language at or near the  
28 beginning of the notice, in capital letters:

29 IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE  
30 WITHIN THE TIME ALLOWED BY STATE BAR RULES,  
31 INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR  
32 AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT  
33 SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS  
34 AN INVOLUNTARY INACTIVE MEMBER OF THE STATE  
35 BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW  
36 UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY  
37 MADE UNDER THE RULES OF PROCEDURE OF THE STATE  
38 BAR, (3) YOU SHALL NOT BE PERMITTED TO  
39 PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS

1 YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE  
2 SUBJECT TO ADDITIONAL DISCIPLINE.

3 (2) The board shall terminate the involuntary inactive enrollment  
4 of a member under this subdivision when the member's default is  
5 set aside on motion timely made under the State Bar Rules of  
6 Procedure or the disciplinary proceedings are completed.

7 (3) The enrollment under this subdivision is administrative in  
8 character and no hearing is required.

9 (4) Upon the involuntary inactive enrollment of a member under  
10 this subdivision, the notice required by subdivision (b) of Section  
11 6092.5 shall be promptly given.

12 (5) The board may delegate its authority under this subdivision  
13 to the presiding referee or presiding judge of the State Bar Court  
14 or his or her designee.

15 (f) The pendency or determination of a proceeding or  
16 investigation provided for by this section shall not abate or  
17 terminate a disciplinary investigation or proceeding except as  
18 required by the facts and law in a particular case.

19 (g) No membership fees shall accrue against the member during  
20 the period he or she is enrolled as an inactive member pursuant to  
21 this section.

22 (h) The board may order a full range of interim remedies or  
23 final discipline short of involuntary inactive enrollment, including,  
24 but not limited to, conditions of probation following final  
25 discipline, or directly ordered interim remedies, to restrict or  
26 supervise an attorney's practice of law, as well as proceedings  
27 under subdivision (a), (b), (c), or (d), or under Section 6102 or  
28 6190. They may include restrictions as to scope of practice,  
29 monetary accounting procedures, review of performance by  
30 probation or other monitors appointed by the board, or such other  
31 measures as may be determined, after hearing, to protect present  
32 and future clients from likely substantial harm. These restrictions  
33 may be imposed upon a showing as provided in subdivision (c),  
34 except that where license restriction is proposed, the showing  
35 required of the State Bar under the factors described in  
36 subparagraph (B) of paragraph (2) of subdivision (c) need not be  
37 made.

38 SEC. 6. Section 6008.1 of the Business and Professions Code  
39 is amended to read:

1 6008.1. No bond, note, debenture, evidence of indebtedness,  
2 mortgage, deed of trust, assignment, pledge, contract, lease,  
3 agreement, or other contractual obligation of the State Bar shall:

4 (a) Create a debt or other liability of the state nor of any entity  
5 other than the State Bar (or any successor public corporation).

6 (b) Create any personal liability on the part of the members of  
7 the State Bar or the members of the board of trustees or any person  
8 executing the same, by reason of the issuance or execution thereof.

9 (c) Be required to be approved or authorized under the  
10 provisions of any other law or regulation of this state.

11 SEC. 7. Section 6008.4 of the Business and Professions Code  
12 is amended to read:

13 6008.4. All powers granted to the State Bar by Sections 6001  
14 and 6008.3 may be exercised and carried out by action of its board  
15 of trustees. In any resolution, indenture, contract, agreement, or  
16 other instrument providing for, creating, or otherwise relating to,  
17 any obligation of the State Bar, the board may make, fix, and  
18 provide such terms, conditions, covenants, restrictions, and other  
19 provisions as the board deems necessary or desirable to facilitate  
20 the creation, issuance, or sale of such obligation or to provide for  
21 the payment or security of such obligation and any interest thereon,  
22 including, but not limited to, covenants and agreements relating  
23 to fixing and maintaining membership fees.

24 SEC. 8. Section 6009.7 is added to the Business and Professions  
25 Code, to read:

26 6009.7. (a) (1) The State Bar shall determine the manner by  
27 which to reduce the board of trustees from 23 members to 19  
28 members, as described in Section 6011, pursuant to the election  
29 and appointment processes specified in Sections 6012, 6013.1,  
30 6013.2, and 6013.3.

31 (2) The State Bar shall develop a plan for implementing the  
32 transition to a 19-member board by January 31, 2012.

33 (3) By January 31, 2012, the State Bar shall submit a written  
34 report to the Senate and Assembly Committees on Judiciary that  
35 includes, but is not limited to, the implementation plan described  
36 in paragraph (2).

37 (b) The State Bar shall complete the transition to a 19-member  
38 board no later than October 31, 2014.

39 (c) The State Bar shall not change, reduce, shorten, lengthen,  
40 or abolish the terms of board members commencing prior to

1 December 31, 2011, or force any board member to resign in order  
2 to institute a 19-member board pursuant to this section.

3 (d) The State Bar shall report annually to the Senate and  
4 Assembly Committees on Judiciary on its progress toward  
5 implementing the transition to a 19-member board.

6 SEC. 9. Section 6010 of the Business and Professions Code is  
7 amended to read:

8 6010. (a) The State Bar is governed by a board known as the  
9 board of trustees of the State Bar. The board has the powers and  
10 duties conferred by this chapter.

11 (b) As used in this chapter or any other provision of law, “board  
12 of governors” shall be deemed to refer to the board of trustees.

13 SEC. 10. Section 6011 of the Business and Professions Code  
14 is amended to read:

15 6011. (a) The board shall consist of no more than 23 members  
16 and no less than 19 members.

17 (b) It is the intent of the Legislature that the board consist of no  
18 more than 23 members and no less than 19 members during the  
19 period of transition from a 23-member board to a 19-member  
20 board, as described in Section 6009.7. It is the intent of the  
21 Legislature that the board, pursuant to the plan developed by the  
22 State Bar as described in Section 6009.7, gradually decrease its  
23 size without shortening, lengthening, or abolishing terms  
24 commencing prior to December 31, 2011, with the ultimate goal  
25 of instituting a 19-member board no later than October 31, 2014,  
26 pursuant to Section 6009.7.

27 SEC. 11. Section 6012 is added to the Business and Professions  
28 Code, to read:

29 6012. (a) State Bar Districts, as they existed on December 31,  
30 2011, pursuant to Section 6012.5, as added by Chapter 1223 of  
31 the Statutes of 1989, shall cease, pursuant to the act that added this  
32 section, for purposes of the election of attorney members of the  
33 board. However, attorney members who were elected in 2009,  
34 2010, or 2011 to serve for a three-year term commencing at the  
35 conclusion of the annual meeting held in those years shall be  
36 eligible to serve their full three-year terms.

37 (b) Commencing on January 1, 2012, State Bar Districts shall  
38 be based on the six court of appeal districts as constituted pursuant  
39 to Section 69100 of the Government Code, as they existed on  
40 December 31, 2011. The board shall provide for the election of

1 six attorney members of the board from these six State Bar Districts  
2 as specified in Section 6013.2.

3 SEC. 12. Section 6012.5 of the Business and Professions Code  
4 is repealed.

5 SEC. 13. Section 6013.1 of the Business and Professions Code  
6 is repealed.

7 SEC. 14. Section 6013.1 is added to the Business and  
8 Professions Code, to read:

9 6013.1. (a) The Supreme Court shall appoint five attorney  
10 members of the board pursuant to a process that the Supreme Court  
11 may prescribe. These attorney members shall serve for a term of  
12 three years and may be reappointed by the Supreme Court for one  
13 additional term only.

14 (b) An attorney member elected pursuant to Section 6013.2 may  
15 be appointed by the Supreme Court pursuant to this section to a  
16 term as an appointed attorney member.

17 (c) The Supreme Court shall fill any vacancy in the term of, and  
18 make any reappointment of, any appointed attorney member.

19 (d) When making appointments to the board, the Supreme Court  
20 should consider appointing attorneys that represent the following  
21 categories: legal services; small firm or solo practitioners;  
22 historically underrepresented groups, including consideration of  
23 race, ethnicity, gender, and sexual orientation; and legal academics.  
24 In making appointments to the board, the Supreme Court should  
25 also consider geographic distribution, years of practice, particularly  
26 attorneys who are within the first five years of practice or 36 years  
27 of age and under, and participation in voluntary local or state bar  
28 activities.

29 (e) The State Bar shall be responsible for carrying out the  
30 administrative responsibilities related to the appointment process  
31 described in subdivision (a).

32 SEC. 15. Section 6013.2 is added to the Business and  
33 Professions Code, to read:

34 6013.2. (a) Six members of the board shall be attorneys elected  
35 from the State Bar Districts created by the board pursuant to  
36 Section 6012.

37 (b) An attorney member elected pursuant to this section shall  
38 serve for a term of three years. An elected attorney member may  
39 run for reelection, but may be reelected to only serve one additional  
40 term.

1 SEC. 15.5. Section 6013.3 is added to the Business and  
2 Professions Code, to read:

3 6013.3. (a) One attorney member of the board shall be  
4 appointed by the Senate Committee on Rules and one attorney  
5 member shall be appointed by the Speaker of the Assembly.

6 (b) An attorney member appointed pursuant to this section shall  
7 serve for a term of three years. An appointed attorney member  
8 may be reappointed pursuant to this section.

9 SEC. 16. Section 6013.4 of the Business and Professions Code  
10 is repealed.

11 SEC. 17. Section 6013.5.5 is added to the Business and  
12 Professions Code, to read:

13 6013.5.5. Sections 450 to 450.6, inclusive, shall apply to public  
14 members appointed or reappointed on or after January 1, 2012.

15 SEC. 18. Section 6013.6 of the Business and Professions Code  
16 is amended to read:

17 6013.6. (a) Except as provided in subdivision (b), any full-time  
18 employee of any public agency who serves as a member of the  
19 Board of Trustees of the State Bar of California shall not suffer  
20 any loss of rights, promotions, salary increases, retirement benefits,  
21 tenure, or other job-related benefits, which he or she would  
22 otherwise have been entitled to receive.

23 (b) Notwithstanding the provisions of subdivision (a), any public  
24 agency which employs a person who serves as a member of the  
25 Board of Trustees of the State Bar of California may reduce the  
26 employee's salary, but no other right or job-related benefit, pro  
27 rata to the extent that the employee does not work the number of  
28 hours required by statute or written regulation to be worked by  
29 other employees of the same grade in any particular pay period  
30 and the employee does not claim available leave time. The  
31 employee shall be afforded the opportunity to perform job duties  
32 during other than regular working hours if such a work arrangement  
33 is practical and would not be a burden to the public agency.

34 (c) The Legislature finds that service as a member of the Board  
35 of Trustees of the State Bar of California by a person employed  
36 by a public agency is in the public interest.

37 SEC. 19. Section 6014 of the Business and Professions Code  
38 is repealed.

39 SEC. 20. Section 6015 of the Business and Professions Code  
40 is amended to read:

1     6015. No person is eligible for attorney membership on the  
2 board unless both of the following conditions are satisfied:

3     (a) He or she is an active member of the State Bar.

4     (b) Either:

5         (1) If elected, he or she maintains his or her principal office for  
6 the practice of law within the State Bar district from which he or  
7 she is elected.

8         (2) If appointed by the Supreme Court or the Legislature, he or  
9 she maintains his or her principal office for the practice of law  
10 within the State of California.

11     SEC. 21. Section 6016 of the Business and Professions Code  
12 is amended to read:

13     6016. The term of office of each attorney member of the board  
14 shall commence at the conclusion of the annual meeting next  
15 succeeding his or her election or appointment, and he or she shall  
16 hold office until his or her successor is elected or appointed and  
17 qualified. For the purposes of this section, the time intervening  
18 between any two successive annual meetings shall be deemed to  
19 be one year.

20     Except as specified in Section 6013.1, vacancies in the board of  
21 trustees shall be filled by the board by special election or by  
22 appointment for the unexpired term.

23     The board of trustees may provide by rule for an interim board  
24 to act in the place and stead of the board when because of vacancies  
25 during terms of office there is less than a quorum of the board.

26     SEC. 22. Section 6017 of the Business and Professions Code  
27 is repealed.

28     SEC. 23. Section 6018 of the Business and Professions Code  
29 is amended to read:

30     6018. Nominations of elected members of the board shall be  
31 by petition signed by at least 20 persons entitled to vote for such  
32 nominees.

33     Only active members of the State Bar maintaining their principal  
34 offices for the practice of the law in the respective State Bar  
35 districts shall be entitled to vote for the member or members of  
36 the board therefrom.

37     SEC. 24. Section 6019 of the Business and Professions Code  
38 is amended to read:



1     6019. Each place upon the board for which a member is to be  
2     elected or appointed shall for the purposes of the election or  
3     appointment be deemed a separate office.

4     If only one member seeks election to an office, the member is  
5     deemed elected. If two or more members seek election to the same  
6     office, the election shall be by ballot. The ballots shall be  
7     distributed to those entitled to vote at least twenty days prior to  
8     the date of canvassing the ballots and shall be returned to a site or  
9     sites designated by the State Bar, where they shall be canvassed  
10    at least five days prior to the ensuing annual meeting. At the annual  
11    meeting, the count shall be certified and the result officially  
12    declared.

13    In all other respects the elections shall be as the board may by  
14    rule direct.

15    SEC. 25. Section 6020 of the Business and Professions Code  
16    is amended to read:

17    6020. The officers of the State Bar are a president, a vice  
18    president, a secretary, and a treasurer.

19    SEC. 26. Section 6021 of the Business and Professions Code  
20    is amended to read:

21    6021. (a) (1) Within the period of 90 days next preceding the  
22    annual meeting, the board, at a meeting called for that purpose,  
23    shall elect the president, vice president, and treasurer for the  
24    ensuing year. The president, the vice president, and the treasurer  
25    shall be elected from among all members of the board.

26    (2) The newly elected president, vice president, and treasurer  
27    shall assume the duties of their respective offices at the conclusion  
28    of the annual meeting following their election.

29    (b) The term of the board president shall be one year, except  
30    that he or she may be reelected to a second one-year term as the  
31    board president.

32    SEC. 27. Section 6024 of the Business and Professions Code  
33    is amended to read:

34    6024. The president shall preside at all meetings of the State  
35    Bar and of the board, and in the event of his or her absence or  
36    inability to act, the vice president shall preside.

37    Other duties of the president and the vice president, and the  
38    duties of the secretary and the treasurer, shall be such as the board  
39    may prescribe.

1 SEC. 28. Section 6026.7 is added to the Business and  
2 Professions Code, to read:

3 6026.7. The board shall ensure that its open meeting  
4 requirements, as described in Section 6026.5, are consistent with,  
5 and conform to, the Bagley-Keene Open Meeting Act (Article 9  
6 (commencing with Section 11120) of Division 3 of Title 2 of the  
7 Government Code).

8 SEC. 29. Section 6033 of the Business and Professions Code  
9 is amended to read:

10 6033. (a) Notwithstanding any other provision of law, the  
11 State Bar is expressly authorized to facilitate the professional  
12 responsibilities of members by collecting, in conjunction with the  
13 State Bar's collection of its annual membership dues or otherwise,  
14 voluntary financial support for nonprofit organizations that provide  
15 free legal services to persons of limited means.

16 (b) To implement this section, the State Bar, in consultation  
17 with the Chief Justice of California, shall appoint a task force of  
18 key stakeholders to analyze the mechanisms and experience of bar  
19 associations that have adopted programs for the collection of  
20 financial contributions from bar members and shall propose an  
21 appropriate method for facilitating the collection and distribution  
22 of voluntary contributions that is best calculated to generate the  
23 greatest level of financial support and participation from State Bar  
24 members, taking into account such issues as the justice-gap  
25 between the legal needs of low-income people in California and  
26 the legal resources available to assist them. The method and any  
27 recommended voluntary contribution amount adopted by the Board  
28 of Trustees of the State Bar of California shall be implemented for  
29 the 2008 fiscal year, and shall be reviewed and adjusted as needed  
30 after two years and, thereafter, every five years as needed, in  
31 consultation with affected service providers and other key  
32 stakeholders.

33 SEC. 30. Section 6036 of the Business and Professions Code  
34 is amended to read:

35 6036. (a) Any member of the board of trustees shall disqualify  
36 himself or herself from making, participating in the making of, or  
37 attempting to influence any decisions of the board or a committee  
38 of the board in which he or she has a financial interest, as that term  
39 is defined in Section 87103 of the Government Code, that it is  
40 reasonably foreseeable may be affected materially by the decision.

1 (b) Any member of the board of trustees shall likewise disqualify  
2 himself or herself when there exists a personal nonfinancial interest  
3 that will prevent the member from applying disinterested skill and  
4 undivided loyalty to the State Bar in making or participating in  
5 the making of decisions.

6 (c) Notwithstanding subdivisions (a) and (b), no member shall  
7 be prevented from making or participating in the making of any  
8 decision to the extent his or her participation is legally required  
9 for the action or decision to be made. The fact that a member's  
10 vote is needed to break a tie does not make his or her participation  
11 legally required for the purposes of this section.

12 (d) A member required to disqualify himself or herself because  
13 of a conflict of interest shall (1) immediately disclose the interest,  
14 (2) withdraw from any participation in the matter, (3) refrain from  
15 attempting to influence another member, and (4) refrain from  
16 voting. It is sufficient for the purpose of this section that the  
17 member indicate only that he or she has a disqualifying financial  
18 or personal interest.

19 (e) For purposes of this article and unless otherwise specified,  
20 "member" means any appointed or elected member of the board  
21 of trustees.

22 SEC. 31. Section 6037 of the Business and Professions Code  
23 is amended to read:

24 6037. No action or decision of the board or committee of the  
25 board shall be invalid because of the participation therein by a  
26 member or members in violation of Section 6036. However, any  
27 member who intentionally violates the provisions of subdivision  
28 (a) of Section 6036 is guilty of a misdemeanor, punishable by  
29 imprisonment in the county jail not exceeding five days, or by a  
30 fine not exceeding one thousand dollars (\$1,000), or by both, and,  
31 if the member is an attorney member of the board, a certified copy  
32 of the record of conviction shall be transmitted to the Supreme  
33 Court for disposition as provided in Sections 6101 and 6102. Upon  
34 entry of final judgment of conviction, the member's term of office  
35 on the board of trustees, and duties and authority incidental thereto,  
36 shall automatically terminate. Any member who intentionally  
37 violates the provisions of subdivision (b) of Section 6036 shall be  
38 liable for a civil penalty not to exceed five hundred dollars (\$500)  
39 for each violation, which shall be assessed and recovered in a civil  
40 action in a court of competent jurisdiction brought in the name of

1 the state only by a district attorney of a county in which the  
2 member resides or maintains offices and the penalty collected shall  
3 be paid to the treasurer of that county.

4 SEC. 32. Section 6040 of the Business and Professions Code  
5 is amended to read:

6 6040. The board of trustees may create local administrative  
7 committees and delegate to them such of its powers and duties as  
8 seems advisable. The board may in its discretion divide any  
9 committee into units or sections with concurrent powers and duties  
10 in order to handle the work of the committee more expeditiously.  
11 The board may also prescribe the powers of the committee and  
12 the units or sections thereof.

13 SEC. 33. Section 6042 of the Business and Professions Code  
14 is amended to read:

15 6042. The members of local administrative committees, except  
16 ex officio members of the board of trustees, shall hold office at  
17 the pleasure of the board.

18 SEC. 34. Section 6046.7 of the Business and Professions Code  
19 is amended to read:

20 6046.7. (a) (1) Notwithstanding any other provision of law,  
21 the Committee of Bar Examiners shall adopt rules that shall be  
22 effective on and after January 1, 2008, for the regulation and  
23 oversight of unaccredited law schools that are required to be  
24 authorized to operate as a business in California and to have an  
25 administrative office in California, including correspondence  
26 schools, that are not accredited by the American Bar Association  
27 or the Committee of Bar Examiners, with the goal of ensuring  
28 consumer protection and a legal education at an affordable cost.

29 (2) Notwithstanding any other provision of law, the committee  
30 shall adopt rules that shall be effective on and after January 1,  
31 2008, for the regulation and oversight of nonlaw school legal  
32 programs leading to a juris doctor (J.D.) degree, bachelor of laws  
33 (LL.B.) degree, or other law study degree.

34 (b) Commencing January 1, 2008, the committee shall assess  
35 and collect a fee from unaccredited law schools and legal programs  
36 in nonlaw schools in an amount sufficient to fund the regulatory  
37 and oversight responsibilities imposed by this section. Nothing in  
38 this subdivision precludes the board of trustees from using other  
39 funds or fees collected by the State Bar or by the committee to  
40 supplement the funding of the regulatory and oversight

1 responsibilities imposed by this section with other funds, if that  
2 supplemental funding is deemed necessary and appropriate to  
3 mitigate some of the additional costs of the regulation and oversight  
4 to facilitate the provision of a legal education at an affordable cost.

5 SEC. 35. Section 6069 of the Business and Professions Code  
6 is amended to read:

7 6069. (a) Every member of the State Bar shall be deemed by  
8 operation of this law to have irrevocably authorized the disclosure  
9 to the State Bar and the Supreme Court pursuant to Section 7473  
10 of the Government Code of any and all financial records held by  
11 financial institutions as defined in subdivisions (a) and (b) of  
12 Section 7465 of the Government Code pertaining to accounts which  
13 the member must maintain in accordance with the Rules of  
14 Professional Conduct; provided that no such financial records shall  
15 be disclosed to the State Bar without a subpoena therefor having  
16 been issued pursuant to Section 6049 of this code, and further  
17 provided that the board of trustees shall by rule provide notice to  
18 the member similar to that notice provided for in subdivision (d)  
19 of Section 7473 of the Government Code. Such notice may be sent  
20 by mail addressed to the member's current office or other address  
21 for State Bar purposes as shown on the member's registration  
22 records of the State Bar.

23 The State Bar shall, by mail addressed to the member's current  
24 office or other address for State Bar purposes as shown on the  
25 member's registration records of the State Bar, notify its members  
26 annually of the provisions of this subdivision.

27 (b) With regard to the examination of all financial records other  
28 than those mentioned in subdivision (a), held by financial  
29 institutions as defined in subdivisions (a) and (b) of Section 7465  
30 of the Government Code, no such financial records shall be  
31 disclosed to the State Bar without a subpoena therefor having been  
32 issued pursuant to Section 6049 of this code and the board of  
33 trustees shall by rule provide for service of a copy of the subpoena  
34 on the customer as defined in subdivision (d) of Section 7465 of  
35 the Government Code and an opportunity for the customer to move  
36 the board or committee having jurisdiction to quash the subpoena  
37 prior to examination of the financial records. Review of the actions  
38 of the board or any committee on such motions shall be had only  
39 by the Supreme Court in accordance with the procedure prescribed  
40 by the court. Service of a copy of any subpoena issued pursuant

1 to this subdivision (b) may be made on a member of the State Bar  
2 by mail addressed to the member's current office or other address  
3 for State Bar purposes as shown on the member's registration  
4 records of the State Bar. If the customer is other than a member,  
5 service shall be made pursuant to Chapter 4 (commencing with  
6 Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure,  
7 except that service may be made by an employee of the State Bar.

8 (c) For purposes of this section, "member of the State Bar" or  
9 "member" means every member of the State Bar, law firm in  
10 California of which a member of the State Bar is a member, and  
11 law corporation within the meaning of Article 10 of Chapter 4 of  
12 Division 3 of this code.

13 SEC. 36. Section 6070 of the Business and Professions Code  
14 is amended to read:

15 6070. (a) The State Bar shall request the California Supreme  
16 Court to adopt a rule of court authorizing the State Bar to establish  
17 and administer a mandatory continuing legal education program.  
18 The rule that the State Bar requests the Supreme Court to adopt  
19 shall require that, within designated 36-month periods, all active  
20 members of the State Bar shall complete at least 25 hours of legal  
21 education activities approved by the State Bar or offered by a State  
22 Bar approved provider, with four of those hours in legal ethics. A  
23 member of the State Bar who fails to satisfy the mandatory  
24 continuing legal education requirements of the program authorized  
25 by the Supreme Court rule shall be enrolled as an inactive member  
26 pursuant to rules adopted by the Board of Trustees of the State  
27 Bar.

28 (b) For purposes of this section, statewide associations of public  
29 agencies and incorporated, nonprofit professional associations of  
30 attorneys, shall be certified as State Bar approved providers upon  
31 completion of an appropriate application process to be established  
32 by the State Bar. The certification may be revoked only by majority  
33 vote of the board, after notice and hearing, and for good cause  
34 shown. Programs provided by the California District Attorneys  
35 Association or the California Public Defenders Association, or  
36 both, including, but not limited to, programs provided pursuant to  
37 Title 1.5 (commencing with Section 11500) of Part 4 of the Penal  
38 Code, are deemed to be legal education activities approved by the  
39 State Bar or offered by a State Bar approved provider.

1 (c) Notwithstanding the provisions of subdivision (a), officers  
2 and elected officials of the State of California, and full-time  
3 professors at law schools accredited by the State Bar of California,  
4 the American Bar Association, or both, shall be exempt from the  
5 provisions of this section. Full-time employees of the State of  
6 California, acting within the scope of their employment, shall be  
7 exempt from the provisions of this section. Nothing in this section  
8 shall prohibit the State of California, or any political subdivision  
9 thereof, from establishing or maintaining its own continuing  
10 education requirements for its employees.

11 (d) The State Bar shall provide and encourage the development  
12 of low-cost programs and materials by which members may satisfy  
13 their continuing education requirements. Special emphasis shall  
14 be placed upon the use of internet capabilities and computer  
15 technology in the development and provision of no-cost and  
16 low-cost programs and materials. Towards this purpose, the State  
17 Bar shall ensure that by July 1, 2000, any member possessing or  
18 having access to the Internet or specified generally available  
19 computer technology shall be capable of satisfying the full  
20 self-study portion of his or her MCLE requirement at a cost of  
21 fifteen dollars (\$15) per hour or less.

22 SEC. 37. Section 6076 of the Business and Professions Code  
23 is amended to read:

24 6076. With the approval of the Supreme Court, the Board of  
25 Trustees may formulate and enforce rules of professional conduct  
26 for all members of the State Bar.

27 SEC. 38. Section 6076.5 of the Business and Professions Code  
28 is amended to read:

29 6076.5. (a) With the approval of the Supreme Court, the  
30 members of the State Bar may formulate by initiative, pursuant to  
31 the provisions of this section, rules of professional conduct for all  
32 members of the bar in the state.

33 (b) Only active members of the State Bar shall be proponents  
34 of initiative measures pursuant to this section.

35 (c) Prior to the circulation of any initiative petition for  
36 signatures, the proponents shall file the text of the proposed  
37 initiative measure with both the Secretary of the State Bar and the  
38 Clerk of the Supreme Court.

39 (d) Upon receipt of the text of a proposed initiative measure,  
40 the secretary shall prepare a summary of the chief purposes and

1 points of the proposed initiative measure. The summary shall give  
2 a true and impartial statement of the purpose of the measure in  
3 such language that it shall not be an argument or likely to create  
4 prejudice either for or against the measure. The secretary shall  
5 provide a copy of the summary to the proponents within 30 days  
6 after receipt of the final version of the proposed measure. If during  
7 the 30-day period the proponents submit amendments, other than  
8 technical, nonsubstantive amendments, to the final version of such  
9 measure, the secretary shall provide a copy of the summary to the  
10 proponents within 30 days after receipt of such amendments.

11 (e) The proponents of any proposed initiative measure shall,  
12 prior to its circulation, place upon each section of the petition,  
13 above the text of the measure and across the top of each page of  
14 the petition on which signatures are to appear, in boldface type  
15 not smaller than 12-point, the summary prepared by the secretary.

16 (f) All such initiative petitions shall have printed across the top  
17 thereof in 12-point boldface type the following: "Initiative measure  
18 to be submitted directly to the members of the State Bar of  
19 California."

20 (g) Any initiative petition may be presented in sections, but  
21 each section shall contain a full and correct copy of the title and  
22 text of the proposed measure.

23 (h) The petition sections shall be designed so that each signer  
24 shall personally affix his or her:

- 25 (1) Signature;
- 26 (2) Printed name;
- 27 (3) State Bar membership number; and
- 28 (4) Principal office address for the practice of law.

29 Only a person who is an active member of the State Bar at the  
30 time of signing the petition is entitled to sign it.

31 The number of signatures attached to each section shall be at  
32 the discretion of the person soliciting the signatures.

33 (i) Any member of the State Bar, or employee or agent thereof,  
34 may circulate an initiative petition anywhere within the state.

35 Any person circulating a petition may sign the section he or she  
36 is circulating if he or she is otherwise qualified to do so.

37 (j) Each section shall have attached thereto the affidavit of the  
38 person soliciting the signatures stating:

- 39 (1) The qualifications of the solicitor;



1 (2) That the signatures affixed to the section were made in his  
2 or her presence;

3 (3) That to the best of his or her knowledge and belief, each  
4 signature is the genuine signature of the person whose name it  
5 purports to be;

6 (4) That to the best of his or her knowledge and belief, each  
7 State Bar membership number is the genuine membership number  
8 of the person whose number it purports to be; and

9 (5) The dates between which all signatures were obtained.

10 The affidavit shall be verified free of charge by any officer  
11 authorized to administer oaths.

12 Petitions so verified shall be prima facie evidence that the  
13 signatures thereon are genuine and that the persons signing are  
14 active members of the State Bar. Unless and until it be otherwise  
15 proven upon official investigation, it shall be presumed that the  
16 petition presented contains the signatures of the requisite number  
17 of active members of the State Bar.

18 (k) All sections of the petition shall be filed with the Secretary  
19 of the State Bar within 180 days after the date upon which the  
20 secretary mailed or delivered to the proponents a copy of the  
21 summary specified in subdivision (d), but all sections circulated  
22 in any State Bar district shall be filed at the same time.

23 (l) No initiative measure shall be submitted to the members of  
24 the State Bar for a vote unless with regard to each State Bar district  
25 the petition has been signed by at least 20 percent of the number  
26 of active members whose principal office for the practice of law  
27 was within the district as of the January 1 preceding the date upon  
28 which all sections of the petition from all State Bar districts were  
29 filed with the secretary.

30 (m) The secretary shall promptly determine the total number of  
31 signatures from each State Bar district affixed to the petition. If  
32 the total number of signatures from any State Bar district is less  
33 than the number required by subdivision (l), the secretary shall so  
34 notify the proponents and no further action shall be taken in regard  
35 to the petition. If the total number of signatures from each and  
36 every State Bar district is equal to or greater than the number  
37 required by subdivision (l), the secretary shall verify the names  
38 and State Bar membership numbers, and may, in his or her  
39 discretion, verify the office addresses and signatures of the persons  
40 who signed the petition. If the total number of verified signers of

1 the petition from any State Bar district is less than the number  
2 required by subdivision (l), the secretary shall so notify the  
3 proponents and no further action shall be taken in regard to the  
4 petition. If the total number of verified signers of the petition from  
5 each and every State Bar district is equal to or greater than the  
6 number required by subdivision (l), the secretary shall cause the  
7 initiative measure to be submitted within 90 days to all of the active  
8 members of the State Bar for mail vote pursuant to such rules and  
9 regulations as the board may from time to time prescribe.

10 (n) The board of trustees, without petition, may also direct the  
11 secretary to cause an initiative measure embodying a rule of  
12 professional conduct formulated by the board to be submitted to  
13 all of the active members of the State Bar for mail vote in  
14 accordance with the rules and regulations prescribed by the board.

15 (o) If a majority of the active members of the State Bar fail to  
16 approve the initiative measure, the secretary shall so notify the  
17 proponents and the Clerk of the Supreme Court.

18 If a majority of the active members of the State Bar approve the  
19 initiative measure, the secretary shall cause the measure to be  
20 submitted to the Supreme Court for its consideration as a rule of  
21 professional conduct.

22 (p) The rules of professional conduct submitted to the Supreme  
23 Court pursuant to the provisions of this section, when approved  
24 by the Supreme Court, shall have the same force and effect as the  
25 rules of professional conduct formulated by the board of trustees  
26 and approved by the Supreme Court pursuant to Sections 6076  
27 and 6077.

28 SEC. 39. Section 6079.5 of the Business and Professions Code  
29 is amended to read:

30 6079.5. (a) The board shall appoint a lawyer admitted to  
31 practice in California to serve as chief trial counsel. He or she shall  
32 be appointed for a term of four years and may be reappointed for  
33 additional four-year periods. He or she shall serve at the pleasure  
34 of the board. He or she shall not engage in private practice. The  
35 State Bar shall notify the Senate Committee on Rules and the  
36 Senate and Assembly Committees on Judiciary within seven days  
37 of the dismissal or hiring of a chief trial counsel.

38 The appointment of the chief trial counsel is subject to  
39 confirmation by the Senate, and the time limits prescribed in

1 Section 1774 of the Government Code for Senate confirmation  
2 and for service in office are applicable to the appointment.

3 He or she shall report to and serve under the Regulation,  
4 Admissions, and Discipline Oversight Committee of the Board of  
5 Trustees of the State Bar or its successor committee on attorney  
6 discipline, and shall not serve under the direction of the chief  
7 executive officer.

8 (b) The chief trial counsel shall have the following  
9 qualifications:

10 (1) Be an attorney licensed to practice in the State of California,  
11 be in good standing and shall not have committed any disciplinary  
12 offenses in California or any other jurisdiction.

13 (2) Have a minimum of five years of experience in the practice  
14 of law, including trial experience, with law practice in broad areas  
15 of the law.

16 (3) Have a minimum of two years of prosecutorial experience  
17 or similar experience in administrative agency proceedings or  
18 disciplinary agencies.

19 (4) Have a minimum of two years of experience in an  
20 administrative role, overseeing staff functions.

21 The board may except an appointee from any of the above  
22 qualifications for good cause upon a determination of necessity to  
23 obtain the most qualified person.

24 On or after July 1, 1987, the chief trial counsel may, as prescribed  
25 by the Supreme Court, petition the court for a different disposition  
26 of a matter than the recommendations of the review department  
27 or the board to the court.

28 SEC. 40. Section 6086 of the Business and Professions Code  
29 is amended to read:

30 6086. The board of trustees, subject to the provisions of this  
31 chapter, may by rule provide the mode of procedure in all cases  
32 of complaints against members.

33 SEC. 41. Section 6086.5 of the Business and Professions Code  
34 is amended to read:

35 6086.5. The board of trustees shall establish a State Bar Court,  
36 to act in its place and stead in the determination of disciplinary  
37 and reinstatement proceedings and proceedings pursuant to  
38 subdivisions (b) and (c) of Section 6007 to the extent provided by  
39 rules adopted by the board of trustees pursuant to this chapter. In  
40 these proceedings the State Bar Court may exercise the powers

1 and authority vested in the board of trustees by this chapter,  
2 including those powers and that authority vested in committees  
3 of, or established by, the board, except as limited by rules of the  
4 board of trustees within the scope of this chapter.

5 For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050,  
6 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081,  
7 and 6082, “board” includes the State Bar Court.

8 Nothing in this section shall authorize the State Bar Court to  
9 adopt rules of professional conduct or rules of procedure.

10 The Executive Committee of the State Bar Court may adopt  
11 rules of practice for the conduct of all proceedings within its  
12 jurisdiction. These rules may not conflict with the rules of  
13 procedure adopted by the board, unless approved by the Supreme  
14 Court.

15 SEC. 42. Section 6086.14 of the Business and Professions  
16 Code is amended to read:

17 6086.14. (a) The Board of Trustees of the State Bar is  
18 authorized to formulate and adopt rules and regulations necessary  
19 to establish an alternative dispute resolution discipline mediation  
20 program to resolve complaints against attorneys that do not warrant  
21 the institution of formal investigation or prosecution. The program  
22 should identify sources of client dissatisfaction and provide a  
23 mediation process to resolve those complaints or disputes unless  
24 the client objects to mediation. The refusal of an attorney to  
25 participate in the State Bar’s alternative dispute resolution  
26 discipline mediation program established pursuant to this section,  
27 or the failure of an attorney to comply with any agreement reached  
28 in the State Bar’s alternative dispute resolution discipline mediation  
29 program may subject that attorney to discipline. The rules may  
30 authorize discipline mediation under this article to proceed under  
31 discipline mediation programs sponsored by local bar associations  
32 in this state. The rules shall authorize a local bar association to  
33 charge a reasonable administrative fee for the purpose of offsetting  
34 the costs of maintaining the discipline mediation programs.

35 (b) The board of trustees shall have the authority to formulate  
36 and adopt standards and guidelines to implement the alternative  
37 dispute resolution discipline mediation program. The standards  
38 and guidelines formulated and adopted by the board, as from time  
39 to time amended, shall be effective and binding on all members,

1 and may encompass any discipline mediation programs sponsored  
2 by local bar associations.

3 (c) It is the intent of the Legislature that the authorization of an  
4 alternative dispute resolution discipline mediation program not be  
5 construed as limiting or altering the powers of the Supreme Court  
6 of this state or the State Bar to disbar or discipline members of the  
7 State Bar. The records relating to the alternative dispute resolution  
8 discipline mediation program may be made available in any  
9 subsequent disciplinary action pursuant to any rule, standard, or  
10 guideline adopted by the Board of Trustees of the State Bar.

11 SEC. 43. Section 6140 of the Business and Professions Code  
12 is amended to read:

13 6140. (a) The board shall fix the annual membership fee for  
14 active members for 2012 at a sum not exceeding three hundred  
15 fifteen dollars (\$315) minus a ten dollar (\$10) rebate to be shown  
16 as such on the annual dues statement directly below the 2012  
17 membership fee.

18 (b) The annual membership fee for active members is payable  
19 on or before the first day of February of each year. If the board  
20 finds it appropriate and feasible, it may provide by rule for payment  
21 of fees on an installment basis with interest, by credit card, or other  
22 means, and may charge members choosing any alternative method  
23 of payment an additional fee to defray costs incurred by that  
24 election.

25 (c) This section shall remain in effect only until January 1, 2013,  
26 and, as of that date, is repealed, unless a later enacted statute, that  
27 is enacted before January 1, 2013, deletes or extends that date.

28 SEC. 44. Section 6140.01 of the Business and Professions  
29 Code is amended to read:

30 6140.01. (a) (1) Twenty dollars (\$20) of the *annual*  
31 membership fee authorized pursuant to Sections 6140 and 6141  
32 shall be allocated for the purposes established pursuant to Section  
33 6033, except to the extent that a member elects not to allocate that  
34 amount of the membership fee for those purposes, in which case  
35 the amount shall be allocated to the general fund of the State Bar  
36 to be available for other regulatory purposes. *support those*  
37 *activities.*

38 (2) The invoice provided to members for payment of the annual  
39 membership fee shall provide each member with the option to  
40 direct the State Bar to retain in the general fund twenty dollars

~~(\$20) of the annual fee described in subparagraph (1) if the member elects not to have this amount allocated for the purposes established pursuant to Section 6033. The invoice shall indicate that if the member elects not to have this amount allocated for the purposes established pursuant to Section 6033, such funds shall be retained in the general fund of the State Bar. the option of deducting twenty dollars (\$20) from the annual membership fee if the member elects not to have this amount allocated as provided in this section.~~

(3) The allocation pursuant to this section shall be known as the Temporary Emergency Legal Services Voluntary Assistance Option.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 45. Section 6140.02 is added to the Business and Professions Code, to read:

6140.02. (a) In the 2012 and 2013 fiscal years, two million dollars (\$2,000,000) of nonmandatory dues collected pursuant to Section 6033 shall be allocated in each of those years for the purposes established pursuant to Section 6033, unless the general fund of the State Bar faces overriding extraordinary circumstances in the 2013 fiscal year.

(b) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 46. Section 6140.05 of the Business and Professions Code is amended to read:

6140.05. (a) The invoice provided to members for payment of the annual membership fee shall provide each member the option of deducting five dollars (\$5) from the annual fee if the member elects not to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in *Keller v. State Bar of California* (1990) 496 U.S. 1.

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of *Keller v. State Bar of California*, and in support or defense of any litigation arising therefrom, the Board of Trustees of the State Bar shall not expend a sum exceeding the following:

1 the product of the number of members paying their annual dues  
2 who did not elect the optional deduction multiplied by five dollars  
3 (\$5).

4 Moneys collected pursuant to this section shall not be deemed  
5 voluntary fees or funds for the purpose of subdivision (c) of Section  
6 6031.5.

7 (c) As used in this section, “lobbying and related activities by  
8 the State Bar” includes the consideration of measures by the Board  
9 of Trustees of the State Bar that are deemed outside the parameters  
10 established in *Keller v. State Bar*, the purview determination,  
11 lobbying and the preparation for lobbying of the measures, and  
12 any litigation in support or defense of that lobbying. The  
13 determination of these costs shall include, but not be limited to,  
14 overhead and administrative costs.

15 SEC. 47. Section 6140.12 is added to the Business and  
16 Professions Code, to read:

17 6140.12. The board shall complete and implement a five-year  
18 strategic plan to be updated every two years. In conjunction with  
19 the submission of the board’s proposed final budget as required  
20 by Section 6140.1, the president shall report to the Supreme Court,  
21 the Governor, and the Senate and Assembly Committees on  
22 Judiciary on the measures the board has taken to implement the  
23 strategic plan and shall indicate the measures the board will need  
24 to take in the remaining years of the strategic plan to address the  
25 projected needs contained in the plan.

26 SEC. 48. Section 6140.5 of the Business and Professions Code  
27 is amended to read:

28 6140.5. (a) The board shall establish and administer a Client  
29 Security Fund to relieve or mitigate pecuniary losses caused by  
30 the dishonest conduct of active members of the State Bar, Foreign  
31 Legal Consultants registered with the State Bar, and attorneys  
32 registered with the State Bar under the Multijurisdictional Practice  
33 Program, arising from or connected with the practice of law. Any  
34 payments from the fund shall be discretionary and shall be subject  
35 to regulation and conditions as the board shall prescribe. The board  
36 may delegate the administration of the fund to the State Bar Court,  
37 or to any board or committee created by the board of trustees.

38 (b) Upon making a payment to a person who has applied to the  
39 fund for payment to relieve or mitigate pecuniary losses caused  
40 by the dishonest conduct of an active member of the State Bar, the

1 State Bar is subrogated, to the extent of that payment, to the rights  
2 of the applicant against any person or persons who, or entity that,  
3 caused the pecuniary loss. The State Bar may bring an action to  
4 enforce those rights within three years from the date of payment  
5 to the applicant.

6 (c) Any attorney whose actions have caused the payment of  
7 funds to a claimant from the Client Security Fund shall reimburse  
8 the fund for all moneys paid out as a result of his or her conduct  
9 with interest, in addition to payment of the assessment for the  
10 procedural costs of processing the claim, as a condition of  
11 continued practice. The reimbursed amount, plus applicable interest  
12 and costs, shall be added to and become a part of the membership  
13 fee of a publicly reprovved or suspended member for the next  
14 calendar year. For a member who resigns with disciplinary charges  
15 pending or a member who is suspended or disbarred, the  
16 reimbursed amount, plus applicable interest and costs, shall be  
17 paid as a condition of reinstatement of membership.

18 (d) Any assessment against an attorney pursuant to subdivision  
19 (c) that is part of an order imposing a public reproof on a member  
20 or is part of an order imposing discipline or accepting a resignation  
21 with a disciplinary matter pending, may also be enforced as a  
22 money judgment. This subdivision does not limit the power of the  
23 Supreme Court to alter the amount owed or to authorize the State  
24 Bar Court, in the enforcement of a judgment under this subdivision,  
25 to approve an agreement for the compromise of that judgment.

26 SEC. 49. Section 6141 of the Business and Professions Code  
27 is amended to read:

28 6141. (a) Until December 31, 2006, the board shall fix the  
29 annual membership fee for inactive members at a sum not  
30 exceeding sixty-five dollars (\$65). On January 1, 2007, and  
31 thereafter, the board shall fix the annual membership fee for  
32 inactive members at a sum not exceeding seventy-five dollars (\$75)  
33 minus a ten dollar (\$10) rebate to be shown as such on the annual  
34 dues statement directly below the 2012 membership fee. The annual  
35 membership fee for inactive members is payable on or before the  
36 first day of February of each year.

37 (b) An inactive member shall not be required to pay the annual  
38 membership fee for inactive members for any calendar year  
39 following the calendar year in which the member attains the age  
40 of 70 years.



1 SEC. 50. Section 6161 of the Business and Professions Code  
2 is amended to read:

3 6161. An applicant for registration as a law corporation shall  
4 supply to the State Bar all necessary and pertinent documents and  
5 information requested by the State Bar concerning the applicant's  
6 plan of operation, including, but not limited to, a copy of its articles  
7 of incorporation, certified by the Secretary of State, a copy of its  
8 bylaws, certified by the secretary of the corporation, the name and  
9 address of the corporation, the names and addresses of its officers,  
10 directors, shareholders, members, if any, and employees who will  
11 render professional services, the address of each office, and any  
12 fictitious name or names which the corporation intends to use. The  
13 State Bar may provide forms of application. If the Board of  
14 Trustees or a committee authorized by it finds that the corporation  
15 is duly organized and existing or duly qualified for the transaction  
16 of intrastate business pursuant to the General Corporation Law,  
17 or pursuant to subdivision (b) of Section 13406 of the Corporations  
18 Code, that each officer (except as provided in Section 13403 of  
19 the Corporations Code), director, shareholder (except as provided  
20 in subdivision (b) of Section 13406 of the Corporations Code),  
21 and each employee who will render professional services is a  
22 licensed person as defined in the Professional Corporation Act, or  
23 a person licensed to render the same professional services in the  
24 jurisdiction or jurisdictions in which the person practices, and that  
25 from the application it appears that the affairs of the corporation  
26 will be conducted in compliance with law and the rules and  
27 regulations of the State Bar, the State Bar shall upon payment of  
28 the registration fee in such amount as it may determine issue a  
29 certificate of registration. The applicant shall include with the  
30 application, for each shareholder of the corporation licensed in a  
31 foreign country but not in this state or in any other state, territory,  
32 or possession of the United States, a certificate from the authority  
33 in the foreign country currently having final jurisdiction over the  
34 practice of law, which shall verify the shareholder's admission to  
35 practice in the foreign country, the date thereof, and the fact that  
36 the shareholder is currently in good standing as an attorney or  
37 counselor at law or the equivalent. If the certificate is not in  
38 English, there shall be included with the certificate a duly  
39 authenticated English translation thereof. The application shall be  
40 signed and verified by an officer of the corporation.

1 SEC. 51. Section 6168 of the Business and Professions Code  
2 is amended to read:

3 6168. The State Bar may conduct an investigation of the  
4 conduct of the business of a law corporation.

5 Upon such investigation, the Board of Trustees, or a committee  
6 authorized by it, shall have power to issue subpoenas, administer  
7 oaths, examine witnesses, and compel the production of records,  
8 in the same manner as upon an investigation or formal hearing in  
9 a disciplinary matter under the State Bar Act. Such investigation  
10 shall be private and confidential, except to the extent that disclosure  
11 of facts and information may be required if a cease and desist order  
12 is thereafter issued and subsequent proceedings are had.

13 SEC. 52. Section 6169 of the Business and Professions Code  
14 is amended to read:

15 6169. (a) When there is reason to believe that a law corporation  
16 has violated or is about to violate any of the provisions of this  
17 article or the Professional Corporation Act or of any other pertinent  
18 statute, rule, or regulation, the State Bar may issue a notice  
19 directing the corporation to show cause why it should not be  
20 ordered to cease and desist from specified acts or conduct or its  
21 certificate of registration should not be suspended or revoked. A  
22 copy of the notice shall be served upon the corporation in the  
23 manner provided for service of summons upon a California  
24 corporation.

25 (b) A hearing upon the notice to show cause shall be held before  
26 a standing or special committee appointed by the board of trustees.  
27 Upon the hearing, the State Bar and the corporation shall be entitled  
28 to the issue of subpoenas, to be represented by counsel, to present  
29 evidence, and examine and cross-examine witnesses.

30 (c) The hearing committee shall make findings in writing and  
31 shall either recommend that the proceeding be dismissed or that a  
32 cease and desist order be issued or that the certificate of registration  
33 of the corporation be suspended or revoked. The determination  
34 may be reviewed by the board of trustees or by a committee  
35 authorized by the Board of Trustees to act in its stead, upon written  
36 petition for review, filed with the State Bar by the corporation or  
37 the State Bar within 20 days after service of the findings and  
38 recommendation. Upon review, the board of trustees or the  
39 committee may take additional evidence, may adopt new or

1 amended findings, and make such order as may be just, as to the  
2 notice to show cause.

3 (d) Subdivisions (a), (b), and (c) shall not apply to the  
4 suspension or revocation of the certificate of registration of a  
5 corporation in either of the following cases:

6 (1) The death of a sole shareholder, as provided in Section  
7 6171.1.

8 (2) Failure to file the annual report and renew the certificate of  
9 registration, as provided in Sections 6161.1 and 6163.

10 SEC. 53. Section 6170 of the Business and Professions Code  
11 is amended to read:

12 6170. Any action of the State Bar or the Board of Trustees or  
13 a committee of the State Bar, or the chief executive officer of the  
14 State Bar or the designee of the chief executive officer, provided  
15 for in this article, may be reviewed by the Supreme Court by  
16 petition for review pursuant to rules prescribed by the Supreme  
17 Court.

18 SEC. 54. Section 6190.1 of the Business and Professions Code  
19 is amended to read:

20 6190.1. (a) An application for assumption by the court of  
21 jurisdiction under this article shall be made to the superior court  
22 for the county where the attorney maintains or most recently has  
23 maintained his or her principal office for the practice of law or  
24 where such attorney resides. The court may assume jurisdiction  
25 over the law practice of an attorney to the extent provided in Article  
26 11 (commencing with Section 6180) of Chapter 4 of Division 3.

27 (b) Where an attorney consents to the assumption by the court  
28 of jurisdiction under the article, the State Bar, a client, or an  
29 interested person or entity may apply to the court for assumption  
30 of jurisdiction over the law practice of the attorney. In any  
31 proceeding under this subdivision, the State Bar shall be permitted  
32 to intervene and to assume primary responsibility for conducting  
33 the action.

34 (c) Where an attorney does not consent to the assumption by  
35 the court of jurisdiction under this article, only the State Bar may  
36 apply to the court for assumption of jurisdiction over the law  
37 practice of the attorney.

38 (d) The chief trial counsel may appoint, pursuant to rules  
39 adopted by the board of trustees, an examiner or coexaminer from

1 among the members of the State Bar in an investigation or formal  
2 proceeding under this article.

3 SEC. 55. Section 6200 of the Business and Professions Code  
4 is amended to read:

5 6200. (a) The board of trustees shall, by rule, establish,  
6 maintain, and administer a system and procedure for the arbitration,  
7 and may establish, maintain, and administer a system and procedure  
8 for mediation of disputes concerning fees, costs, or both, charged  
9 for professional services by members of the State Bar or by  
10 members of the bar of other jurisdictions. The rules may include  
11 provision for a filing fee in the amount as the board may, from  
12 time to time, determine.

13 (b) This article shall not apply to any of the following:

14 (1) Disputes where a member of the State Bar of California is  
15 also admitted to practice in another jurisdiction or where an  
16 attorney is only admitted to practice in another jurisdiction, and  
17 he or she maintains no office in the State of California, and no  
18 material portion of the services were rendered in the State of  
19 California.

20 (2) Claims for affirmative relief against the attorney for damages  
21 or otherwise based upon alleged malpractice or professional  
22 misconduct, except as provided in subdivision (a) of Section 6203.

23 (3) Disputes where the fee or cost to be paid by the client or on  
24 his or her behalf has been determined pursuant to statute or court  
25 order.

26 (c) Unless the client has agreed in writing to arbitration under  
27 this article of all disputes concerning fees, costs, or both, arbitration  
28 under this article shall be voluntary for a client and shall be  
29 mandatory for an attorney if commenced by a client. Mediation  
30 under this article shall be voluntary for an attorney and a client.

31 (d) The board of trustees shall adopt rules to allow arbitration  
32 and mediation of attorney fee and cost disputes under this article  
33 to proceed under arbitration and mediation systems sponsored by  
34 local bar associations in this state. Rules of procedure promulgated  
35 by local bar associations are subject to review by the board or a  
36 committee designated by the board to ensure that they provide for  
37 a fair, impartial, and speedy hearing and award.

38 (e) In adopting or reviewing rules of arbitration under this  
39 section, the board shall provide that the panel shall include one  
40 attorney member whose area of practice is either, at the option of

1 the client, civil law, if the attorney's representation involved civil  
2 law, or criminal law, if the attorney's representation involved  
3 criminal law, as follows:

4 (1) If the panel is composed of three members the panel shall  
5 include one attorney member whose area of practice is either, at  
6 the option of the client, civil or criminal law, and shall include one  
7 lay member.

8 (2) If the panel is composed of one member, that member shall  
9 be an attorney whose area of practice is either, at the option of the  
10 client, civil or criminal law.

11 (f) In any arbitration or mediation conducted pursuant to this  
12 article by the State Bar or by a local bar association, pursuant to  
13 rules of procedure approved by the board of trustees, an arbitrator  
14 or mediator, as well as the arbitrating association and its directors,  
15 officers, and employees, shall have the same immunity which  
16 attaches in judicial proceedings.

17 (g) In the conduct of arbitrations under this article the arbitrator  
18 or arbitrators may do all of the following:

19 (1) Take and hear evidence pertaining to the proceeding.

20 (2) Administer oaths and affirmations.

21 (3) Issue subpoenas for the attendance of witnesses and the  
22 production of books, papers, and documents pertaining to the  
23 proceeding.

24 (h) Participation in mediation is a voluntary consensual process,  
25 based on direct negotiations between the attorney and his or her  
26 client, and is an extension of the negotiated settlement process.  
27 All discussions and offers of settlement are confidential and may  
28 not be disclosed in any subsequent arbitration or other proceedings.

29 SEC. 56. Section 6201 of the Business and Professions Code  
30 is amended to read:

31 6201. (a) The rules adopted by the board of trustees shall  
32 provide that an attorney shall forward a written notice to the client  
33 prior to or at the time of service of summons or claim in an action  
34 against the client, or prior to or at the commencement of any other  
35 proceeding against the client under a contract between attorney  
36 and client which provides for an alternative to arbitration under  
37 this article, for recovery of fees, costs, or both. The written notice  
38 shall be in the form that the board of trustees prescribes, and shall  
39 include a statement of the client's right to arbitration under this  
40 article. Failure to give this notice shall be a ground for the dismissal

1 of the action or other proceeding. The notice shall not be required,  
2 however, prior to initiating mediation of the dispute.

3 The rules adopted by the board of trustees shall provide that the  
4 client's failure to request arbitration within 30 days after receipt  
5 of notice from the attorney shall be deemed a waiver of the client's  
6 right to arbitration under the provisions of this article.

7 (b) If an attorney, or the attorney's assignee, commences an  
8 action in any court or any other proceeding and the client is entitled  
9 to maintain arbitration under this article, and the dispute is not one  
10 to which subdivision (b) of Section 6200 applies, the client may  
11 stay the action or other proceeding by serving and filing a request  
12 for arbitration in accordance with the rules established by the board  
13 of trustees pursuant to subdivision (a) of Section 6200. The request  
14 for arbitration shall be served and filed prior to the filing of an  
15 answer in the action or equivalent response in the other proceeding;  
16 failure to so request arbitration prior to the filing of an answer or  
17 equivalent response shall be deemed a waiver of the client's right  
18 to arbitration under the provisions of this article if notice of the  
19 client's right to arbitration was given pursuant to subdivision (a).

20 (c) Upon filing and service of the request for arbitration, the  
21 action or other proceeding shall be automatically stayed until the  
22 award of the arbitrators is issued or the arbitration is otherwise  
23 terminated. The stay may be vacated in whole or in part, after a  
24 hearing duly noticed by any party or the court, if and to the extent  
25 the court finds that the matter is not appropriate for arbitration  
26 under the provisions of this article. The action or other proceeding  
27 may thereafter proceed subject to the provisions of Section 6204.

28 (d) A client's right to request or maintain arbitration under the  
29 provisions of this article is waived by the client commencing an  
30 action or filing any pleading seeking either of the following:

31 (1) Judicial resolution of a fee dispute to which this article  
32 applies.

33 (2) Affirmative relief against the attorney for damages or  
34 otherwise based upon alleged malpractice or professional  
35 misconduct.

36 (e) If the client waives the right to arbitration under this article,  
37 the parties may stipulate to set aside the waiver and to proceed  
38 with arbitration.

39 SEC. 57. Section 6203 of the Business and Professions Code  
40 is amended to read:

1     6203. (a) The award shall be in writing and signed by the  
2 arbitrators concurring therein. It shall include a determination of  
3 all the questions submitted to the arbitrators, the decision of which  
4 is necessary in order to determine the controversy. The award shall  
5 not include any award to either party for costs or attorney's fees  
6 incurred in preparation for or in the course of the fee arbitration  
7 proceeding, notwithstanding any contract between the parties  
8 providing for such an award or costs or attorney's fees. However,  
9 the filing fee paid may be allocated between the parties by the  
10 arbitrators. This section shall not preclude an award of costs or  
11 attorney's fees to either party by a court pursuant to subdivision  
12 (c) of this section or of subdivision (d) of Section 6204. The State  
13 Bar, or the local bar association delegated by the State Bar to  
14 conduct the arbitration, shall deliver to each of the parties with the  
15 award, an original declaration of service of the award.

16     Evidence relating to claims of malpractice and professional  
17 misconduct, shall be admissible only to the extent that those claims  
18 bear upon the fees, costs, or both, to which the attorney is entitled.  
19 The arbitrators shall not award affirmative relief, in the form of  
20 damages or offset or otherwise, for injuries underlying the claim.  
21 Nothing in this section shall be construed to prevent the arbitrators  
22 from awarding the client a refund of unearned fees, costs, or both  
23 previously paid to the attorney.

24     (b) Even if the parties to the arbitration have not agreed in  
25 writing to be bound, the arbitration award shall become binding  
26 upon the passage of 30 days after service of notice of the award,  
27 unless a party has, within the 30 days, sought a trial after arbitration  
28 pursuant to Section 6204. If an action has previously been filed in  
29 any court, any petition to confirm, correct, or vacate the award  
30 shall be to the court in which the action is pending, and may be  
31 served by mail on any party who has appeared, as provided in  
32 Chapter 4 (commencing with Section 1003) of Title 14 of Part 2  
33 of the Code of Civil Procedure; otherwise it shall be in the same  
34 manner as provided in Chapter 4 (commencing with Section 1285)  
35 of Title 9 of Part 3 of the Code of Civil Procedure. If no action is  
36 pending in any court, the award may be confirmed, corrected, or  
37 vacated by petition to the court having jurisdiction over the amount  
38 of the arbitration award, but otherwise in the same manner as  
39 provided in Chapter 4 (commencing with Section 1285) of Title  
40 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or



1 reasonable costs, or both, as directed by the State Bar. Penalties  
2 imposed shall not exceed 20 percent of the amount to be refunded  
3 to the client or one thousand dollars (\$1,000), whichever is greater.  
4 Any penalties or costs, or both, that are not paid shall be added to  
5 the membership fee of the attorney for the next calendar year.

6 (4) The board shall terminate the inactive enrollment upon proof  
7 that the attorney has complied with the award, judgment, or  
8 agreement and upon payment of any costs or penalties, or both,  
9 assessed as a result of the attorney's failure to comply.

10 (5) A request for enforcement under this subdivision shall be  
11 made within four years from the date (A) the arbitration award  
12 was mailed, (B) the judgment was entered, or (C) the date the  
13 agreement was signed. In an arbitrated matter, however, in no  
14 event shall a request be made prior to 100 days from the date of  
15 the service of a signed copy of the award. In cases where the award  
16 is appealed, a request shall not be made prior to 100 days from the  
17 date the award has become final as set forth in this section.

18 SEC. 58. Section 6204 of the Business and Professions Code  
19 is amended to read:

20 6204. (a) The parties may agree in writing to be bound by the  
21 award of arbitrators appointed pursuant to this article at any time  
22 after the dispute over fees, costs, or both, has arisen. In the absence  
23 of such an agreement, either party shall be entitled to a trial after  
24 arbitration if sought within 30 days, pursuant to subdivisions (b)  
25 and (c), except that if either party willfully fails to appear at the  
26 arbitration hearing in the manner provided by the rules adopted  
27 by the board of trustees, that party shall not be entitled to a trial  
28 after arbitration. The determination of willfulness shall be made  
29 by the court. The party who failed to appear at the arbitration shall  
30 have the burden of proving that the failure to appear was not  
31 willful. In making its determination, the court may consider any  
32 findings made by the arbitrators on the subject of a party's failure  
33 to appear.

34 (b) If there is an action pending, the trial after arbitration shall  
35 be initiated by filing a rejection of arbitration award and request  
36 for trial after arbitration in that action within 30 days after service  
37 of notice of the award. If the rejection of arbitration award has  
38 been filed by the plaintiff in the pending action, all defendants  
39 shall file a responsive pleading within 30 days following service  
40 upon the defendant of the rejection of arbitration award and request

1 for trial after arbitration. If the rejection of arbitration award has  
2 been filed by the defendant in the pending action, all defendants  
3 shall file a responsive pleading within 30 days after the filing of  
4 the rejection of arbitration award and request for trial after  
5 arbitration. Service may be made by mail on any party who has  
6 appeared; otherwise service shall be made in the manner provided  
7 in Chapter 4 (commencing with Section 413.10) of Title 5 of Part  
8 2 of the Code of Civil Procedure. Upon service and filing of the  
9 rejection of arbitration award, any stay entered pursuant to Section  
10 6201 shall be vacated, without the necessity of a court order.

11 (c) If no action is pending, the trial after arbitration shall be  
12 initiated by the commencement of an action in the court having  
13 jurisdiction over the amount of money in controversy within 30  
14 days after service of notice of the award. After the filing of such  
15 an action, the action shall proceed in accordance with the  
16 provisions of Part 2 (commencing with Section 307) of the Code  
17 of Civil Procedure, concerning civil actions generally.

18 (d) The party seeking a trial after arbitration shall be the  
19 prevailing party if that party obtains a judgment more favorable  
20 than that provided by the arbitration award, and in all other cases  
21 the other party shall be the prevailing party. The prevailing party  
22 may, in the discretion of the court, be entitled to an allowance for  
23 reasonable attorney's fees and costs incurred in the trial after  
24 arbitration, which allowance shall be fixed by the court. In fixing  
25 the attorney's fees, the court shall consider the award and  
26 determinations of the arbitrators, in addition to any other relevant  
27 evidence.

28 (e) Except as provided in this section, the award and  
29 determinations of the arbitrators shall not be admissible nor operate  
30 as collateral estoppel or res judicata in any action or proceeding.

31 SEC. 59. Section 6206 of the Business and Professions Code  
32 is amended to read:

33 6206. The time for filing a civil action seeking judicial  
34 resolution of a dispute subject to arbitration under this article shall  
35 be tolled from the time an arbitration is initiated in accordance  
36 with the rules adopted by the board of trustees until (a) 30 days  
37 after receipt of notice of the award of the arbitrators, or (b) receipt  
38 of notice that the arbitration is otherwise terminated, whichever  
39 comes first. Arbitration may not be commenced under this article  
40 if a civil action requesting the same relief would be barred by any

1 provision of Title 2 (commencing with Section 312) of Part 2 of  
2 the Code of Civil Procedure; provided that this limitation shall not  
3 apply to a request for arbitration by a client, pursuant to the  
4 provisions of subdivision (b) of Section 6201, following the filing  
5 of a civil action by the attorney.

6 SEC. 60. Section 6222 of the Business and Professions Code  
7 is amended to read:

8 6222. A recipient of funds allocated pursuant to this article  
9 annually shall submit a financial statement to the State Bar,  
10 including an audit of the funds by a certified public accountant or  
11 a fiscal review approved by the State Bar, a report demonstrating  
12 the programs on which they were expended, a report on the  
13 recipient's compliance with the requirements of Section 6217, and  
14 progress in meeting the service expansion requirements of Section  
15 6221.

16 The Board of Trustees of the State Bar shall include a report of  
17 receipts of funds under this article, expenditures for administrative  
18 costs, and disbursements of the funds, on a county-by-county basis,  
19 in the annual report of State Bar receipts and expenditures required  
20 pursuant to Section 6145.

21 SEC. 61. Section 6225 of the Business and Professions Code  
22 is amended to read:

23 6225. The Board of Trustees of the State Bar shall adopt the  
24 regulations and procedures necessary to implement this article and  
25 to ensure that the funds allocated herein are utilized to provide  
26 civil legal services to indigent persons, especially underserved  
27 client groups such as but not limited to the elderly, the disabled,  
28 juveniles, and non-English-speaking persons.

29 In adopting the regulations the Board of Trustees shall comply  
30 with the following procedures:

31 (a) The board shall publish a preliminary draft of the regulations  
32 and procedures, which shall be distributed, together with notice  
33 of the hearings required by subdivision (b), to commercial banking  
34 institutions, to members of the State Bar, and to potential recipients  
35 of funds.

36 (b) The board shall hold at least two public hearings, one in  
37 southern California and one in northern California where affected  
38 and interested parties shall be afforded an opportunity to present  
39 oral and written testimony regarding the proposed regulations and  
40 procedures.

1 SEC. 62. Section 6226 of the Business and Professions Code  
2 is amended to read:

3 6226. The program authorized by this article shall become  
4 operative only upon the adoption of a resolution by the Board of  
5 Trustees of the State Bar stating that regulations have been adopted  
6 pursuant to Section 6225 which conform the program to all  
7 applicable tax and banking statutes, regulations, and rulings.

8 SEC. 63. Section 6231 of the Business and Professions Code  
9 is amended to read:

10 6231. (a) The board shall establish and administer an Attorney  
11 Diversion and Assistance Program, and shall establish a committee  
12 to oversee the operation of the program. The committee shall be  
13 comprised of 12 members who shall be appointed as follows:

14 (1) Six members appointed by the Board of Trustees, including  
15 the following:

16 (A) Two members who are licensed mental health professionals  
17 with knowledge and expertise in the identification and treatment  
18 of substance abuse and mental illness.

19 (B) One member who is a physician with knowledge and  
20 expertise in the identification and treatment of alcoholism and  
21 substance abuse.

22 (C) One member of the board of directors of a statewide  
23 nonprofit organization established for the purpose of assisting  
24 lawyers with alcohol or substance abuse problems, which has been  
25 in continuous operation for a minimum of five years.

26 (D) Two members who are attorneys, at least one of which is  
27 in recovery and has at least five years of continuous sobriety.

28 (2) Four members appointed by the Governor, including the  
29 following:

30 (A) Two members who are attorneys.

31 (B) Two members of the public.

32 (3) One member of the public appointed by the Speaker of the  
33 Assembly.

34 (4) One member of the public appointed by the Senate  
35 Committee on Rules.

36 (b) Committee members shall serve terms of four years, and  
37 may be reappointed as many times as desired. The board shall  
38 stagger the terms of the initial members appointed.

39 (c) Subject to the approval of the board, the committee may  
40 adopt reasonable rules and regulations as may be necessary or

1 advisable for the purpose of implementing and operating the  
2 program.

3 SEC. 64. Section 6238 of the Business and Professions Code  
4 is amended to read:

5 6238. The committee shall report to the Board of Trustees and  
6 to the Legislature not later than March 1, 2003, and annually  
7 thereafter, on the implementation and operation of the program.  
8 The report shall include, but is not limited to, information  
9 concerning the number of cases accepted, denied, or terminated  
10 with compliance or noncompliance, and annual expenditures related  
11 to the program.

O